

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: April 29, 2021

* * * * *

MIDLAND TRUST COMPANY,

Guardian of the property of

M.S.M., a minor,

Petitioner,

v.

SECRETARY OF HEALTH

AND HUMAN SERVICES,

Respondent.

* * * * *

*

*

*

*

*

*

*

*

*

*

*

*

*

UNPUBLISHED

No. 14-1186V

Special Master Gowen

Attorneys' Fees and Costs.

Renee J. Gentry, The Law Office of Renee J. Gentry, Washington, D.C., for petitioner.
Christine M. Becer, United States Department of Justice, Washington, D.C., for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

On December 10, 2020, Midland Trust Company, as guardian of the property of M.S.M., a minor ("petitioner") filed a motion for final attorneys' fees and costs ("Fees App.") (ECF No. 172). For the reasons discussed below, I **GRANT** petitioner's motion and award \$160,427.63 in final attorneys' fees and costs.

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), because this opinion contains a reasoned explanation for the action in this case, I am required to post it on the website of the United States Court of Federal Claims. The court's website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. **This means the opinion will be available to anyone with access to the Internet.** Before the opinion is posted on the court's website, each party has 14 days to file a motion requesting redaction "of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy." Vaccine Rule 18(b). An objecting party must provide the court with a proposed redacted version of the opinion. *Id.* **If neither party files a motion for redaction within 14 days, the opinion will be posted on the court's website without any changes.** *Id.*

I. Procedural History

On December 10, 2014, the underlying claim was filed in the National Vaccine Injury Compensation Program.² Petition (ECF No. 1). The claim concerned M.S.M.'s receipt of several scheduled six-month vaccinations and her subsequent development of an acquired epileptic encephalopathy. Interim attorneys' fees and costs were awarded to petitioner's counsel on May 30, 2017. Int. Fee Decision (ECF No. 74). Both parties retained medical experts and participated in an entitlement hearing on October 2 – 3, 2017. Transcript (ECF Nos. 118, 120). Following the submission of post-hearing briefs, on July 30, 2019, I issued a ruling finding causation-in-fact for M.S.M.'s injuries and that consequently, compensation should be awarded for her damages. Entitlement Ruling (ECF No. 74). On September 15, 2020, I awarded compensation to petitioner, on behalf of M.S.M., on the terms set forth in respondent's proffer. Proffer (ECF No. 166); Decision (ECF No. 167).

On December 10, 2020, petitioner filed the present motion, which requests final attorneys' fees of \$97,614.60 and attorneys' costs of \$62,813.03, for a total request of \$160,427.63. Pet. Fees App. at 1. Petitioner avers that it has not incurred any costs not borne by counsel. *Id.* at n. 2. On December 24, 2020, respondent filed a response which provides that respondent is satisfied that the statutory requirements for attorneys' fees and costs are met in this case. Fees Response (ECF No. 173) at 2. Petitioner has not filed a reply. Petitioner's motion is now ripe for adjudication.

II. Legal Standard

The Vaccine Act provides that in the event that a petition results in compensation, the special master "shall" also award reasonable attorneys' fees and costs incurred in any proceeding on such petition. 42 U.S.C. § 300aa-15(e)(1). Here, as petitioner was awarded compensation pursuant to a proffer, petitioner shall also receive an award of attorneys' fees and costs.

The Federal Circuit has approved the use of the lodestar approach to determine reasonable attorneys' fees and costs under the Vaccine Act. *Avera v. Sec'y of Health & Human Servs.*, 515 F. 3d 1343, 1349 (Fed. Cir. 2008). Using the lodestar approach, a court first determines the reasonable hourly rate, which is then applied to the number of hours reasonable expended on the litigation. *Id.* at 1347-58 (citing *Blum v. Stenson*, 465 U.S. 886, 888 (1984)). The Office of Special Masters ("OSM") has prepared ranges of reasonable hourly rates for attorneys of varying experience and for paralegals, which are posted on the Court's website.³

Petitioners "bea[r] the burden of establishing the hours expended, the rates charged, and the expenses incurred" are reasonable. *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1993). Adequate proof of the claimed fees and costs should be presented when the

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to 34 (2012) ("Vaccine Act" or "the Act"). Hereinafter, individual section references will be to 42 U.S.C. § 300aa of the Act.

³ Court of Federal Claims – Office of Special Masters, *OSM Attorneys' Forum Hourly Rate Fee Schedules*, at <https://www.uscfc.uscourts.gov/node/2914>.

motion is filed. *Id.* at 484 n.1. The special master has the discretion to reduce awards *sua sponte*, independent of enumerated objections from the respondent. *Sabella v. Sec’y of Health & Human Servs.*, 86 Fed. Cl. 201, 208-09 (Fed. Cl. 2009); *Savin v. Sec’y of Health & Human Servs.*, 85 Fed. Cl. 313 (Fed. Cl. 2008), *aff’d* No. 99-537V, 2008 WL 2066611 (Fed. Cl. Spec. Mstr. Apr. 22, 2008). Special masters may look to their experience and judgment to reduce the number of hours billed to a level they find reasonable for the work performed. *Saxton v. Sec’y of Health & Human Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993). A line-by-line evaluation of the billing records is not required. *Wasson*, 24 Cl. Ct., *aff’d in relevant part*, 988 F.2d 131 (Fed Cir. 1993) (per curiam).

III. Analysis

A. Attorneys’ Fees

Petitioner requests hourly rates for attorneys Renee Gentry, Clifford Shoemaker, and Sabrina Knickelbein for 2017 – 2020, which are consistent with many previous decisions awarded by myself and other special masters. Pet. Fee App – Attachment 1 at 19. I find that these hourly rates are also reasonable for the work documented in the instant motion. Turning next to review of the submitted billing statement, I find that the overall hours spent on this matter appear to be reasonable. The entries reasonably and accurately describe the work performed and the length of time it took to perform each task. Moreover, respondent has not identified any particular entries as being objectionable. Therefore, they are compensated without adjustment.

B. Attorneys’ Costs

Like attorneys’ fees, a request for reimbursement of costs must be reasonable. *Perreira v. Sec’y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Here, petitioner requests final attorneys’ costs totaling \$62,813.03. Pet. Fees App. – Attachment 2 at 1. The costs are for petitioner’s retention of two medical experts; participation in the entitlement hearing in Washington, D.C.; the continued involvement of petitioner’s original attorney J. Robb Cecil and his paralegal, who helped to communicate with M.S.M.’s family in Spanish; formulating a life care plan; and establishing a guardianship for M.S.M. These costs are adequately documented and reasonable. They will be awarded without adjustment.

IV. Conclusion

Accordingly, petitioner’s motion is **GRANTED** and I award the following reasonable final attorneys’ fees and costs:

- 1) A lump sum in the amount of \$160,427.63, representing reimbursement for final attorneys’ fees and costs, in the form of a check payable to petitioner and her attorney Renee J. Gentry. ⁴**

⁴ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, “advanced costs,” and fees for legal services rendered. Furthermore, Section 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec’y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir. 1991).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the Clerk of Court shall enter judgment in accordance herewith.⁵

IT IS SO ORDERED.

s/Thomas L. Gowen

Thomas L. Gowen
Special Master

⁵ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. Vaccine Rule 11(a).